

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

MKB CONSTRUCTION, INC.,

Defendant.

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CIVIL ACTION NO. 3:11-cv-00404-KC

CONSENT DECREE

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), and Defendant, MKB Construction, Inc. ("MKB"). This Consent Decree resolves the allegations raised by the EEOC in the above-referenced Civil Action No. 3:11-cv-00404-KC.

The EEOC initiated this lawsuit under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, alleging unlawful employment practices on the basis of retaliation. Specifically, the EEOC alleges that MKB violated Title VII by terminating David Morales in retaliation for reporting sexual harassment on the job. Defendant, MKB, specifically denies these allegations.

The EEOC and MKB wish to settle this action, without the risks, uncertainties and expenses of continued litigation, under the terms set forth in this Consent Decree.

IT IS DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action and the parties, venue is proper, and all administrative prerequisites to the EEOC's filing of this action have been met. The parties stipulate to the Court's jurisdiction.

2. This Consent Decree resolves all issues raised in the EEOC's Complaint. The EEOC waives further litigation of all issues raised in the above-referenced Complaint. The EEOC expressly reserves its right, however, to process and litigate any other charges which may now be pending or may in the future be filed against Defendant, MKB. Defendant, MKB, specifically asserts that by entering into this Consent Decree, it makes no admission of liability or wrongdoing, and further contends that its owners, managers, supervisors, staff and personnel did not retaliate against Mr. Morales.

3. During the two (2) year term of this Consent Decree, Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, are hereby enjoined from retaliating against individuals because they opposed a practice made unlawful by Title VII; or because they have filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

4. Within thirty (30) days of the entry of this Consent Decree, Defendant, MKB, in settlement of this dispute, shall pay to David Morales, the sum total of \$38,500.00 (Thirty-Eight Thousand Five Hundred Dollars). Payment to David Morales shall be mailed to David Morales, 12421 Tierra Lucia Court, El Paso, TX 79938. A copy of the settlement check and any accompanying transmittal documents shall be forwarded to the EEOC to the attention of Judith G. Taylor, Supervisory Trial Attorney, 5410 Fredericksburg Rd., Suite 200, San Antonio, Texas 78229.

5. Within forty-five (45) days after the entry of this Decree, Defendant, MKB, shall issue a written anti-retaliation policy which meets the following criteria:

- (a) Contains a provision stating that Defendant, MKB, prohibits discrimination against employees on the basis of retaliation; and
- (b) Provides for substantial and progressive discipline of employees for violating the anti-retaliation policy, up to and including discharge.

6. Within forty-five (45) days after the entry of this Decree, Defendant, MKB, shall issue a written complaint procedure that assists employees to come forward with complaints regarding violations of its anti-discrimination policy. This complaint procedure shall provide the following:

- (a) Simple, convenient, confidential and reliable mechanisms for reporting incidents of discrimination;
- (b) Prompt investigation of discrimination complaints;
- (c) Prompt communication to the complaining employee of the results of the investigation and any remedial actions taken or proposed;
- (d) Appropriate remedial action to resolve the complaint and deter future incidents of discrimination; and
- (e) Assurances that complainants shall not be subjected to any retaliation for having made a complaint of discrimination.

7. Within ninety (90) days after the entry of this Decree, Defendant, MKB, shall, at its own cost, provide no less than one (1) hour of training to all managers, supervisors and human resources personnel regarding anti-discrimination laws under Title VII and in particular focusing on retaliation. This training shall meet the following criteria:

- (a) Within thirty (30) days prior to the date scheduled for this training, Defendant shall provide the EEOC a written report describing the antidiscrimination training, identifying the instructor(s) and listing his/her qualifications to conduct such training;
- (b) Within ten (10) days after receiving this written report describing the antidiscrimination training, the EEOC shall have the right to disapprove the training and/or the instructor(s);
- (c) The training shall explain the law relating to retaliation discrimination under Title VII and instruct what conduct may discriminate on the basis of retaliation; and
- (e) All training participants shall be required to sign a registry upon completion of the training.

8. Within ten (10) days from the entry of this Consent Decree, Defendant shall post copies of the Notice attached as Exhibit "A" to this Consent Decree in a conspicuous location easily accessible to and commonly frequented by employees. The Notice shall remain posted for the duration of this Consent Decree. Defendant shall ensure that the posting is not altered, defaced or covered by any other material.

9. During the term of this Consent Decree, and ten (10) days after serving written notice on Defendant, MKB, through its counsel of record, Mary Goodrich Nix, with the law offices of Gordon & Rees, LLP at 2100 Ross Avenue, Suite 2800, Dallas, Texas 75201, the EEOC may:

- (a) Conduct inspections at Defendant's facilities;
- (b) Interview employees; and
- (c) Examine and copy relevant documents.

10. Defendant, MKB, shall bear the costs associated with administering and implementing the provisions of this Consent Decree.

11. The duration of this Consent Decree shall be two (2) years from the date of its entry with the Court. The Parties agree that the Court shall retain jurisdiction of this case during the term of this Consent Decree to enforce compliance, adjudicate disputes and to take any action necessary and/or appropriate for the Decree's interpretation, execution, and or modification.

12. Except as provided herein, the parties to this Consent Decree shall bear their own costs and attorney's fees. Furthermore, the parties agree that pursuant to Section 706(k) of Title VII, 42 U.S.C. § 2000e-5(k), there is no "prevailing party" in this action or proceeding.

13. The terms of this Consent Decree shall be binding upon the EEOC and MKB, its agents, officers, employees, servants, successors, and assigns, as to the issues resolved herein.

14. When this Consent Decree requires the submission by MKB of documents or other materials to EEOC, such documents or other materials shall be mailed to Judith G. Taylor, Supervisory Trial Attorney, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

SO ORDERED AND ENTERED this 22nd day of August, 2012.

HONORABLE KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

AGREED TO AS TO FORM AND SUBSTANCE:

Signed this 24 day of July, 2012.


**ATTORNEY FOR MKB
CONSTRUCTION, INC.**




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EXHIBIT A

POLICY: Discrimination of any kind can and often will detract from an employee's job performance, discourage employees from remaining on the job, keep employees from advancing in their careers and lower overall employee morale and productivity. It is the policy of MKB Construction, Inc. that discrimination and retaliation are unacceptable conduct and will not be condoned.

PURPOSE: It is the purpose of this policy to reaffirm and amplify the position of Title VII of the Civil Rights Act of 1964, as amended, and the Equal Employment Opportunity Commission's guidelines on discrimination and/or retaliation and to reiterate MKB Construction, Inc.'s policy against discrimination and/or retaliation.

SCOPE: This policy extends to all employees of MKB Construction, Inc., including management, non-management, temporary and/or probationary.

DEFINITION: Discrimination occurs when an employment decision is made based on a person's race, national origin, gender, color, religion, age, disability and/or based on retaliation rather than on legitimate factors. Retaliation is taking an adverse action against an employee because he/she opposed or complained of a practice made unlawful by Title VII, or because he/she participated in an investigation, proceeding, or hearing under Title VII.

RESPONSIBILITY: Each level of management is responsible for ensuring that all personnel policies, procedure, and activities are in full compliance with applicable federal, state, and local equal employment laws, statutes, rules, and regulations regarding discrimination and retaliation. Employees are expected to read, understand, and follow the policies that MKB Construction, Inc. has established to prevent discrimination and retaliation.

REPORTING PROCEDURES: Any employee who believes that he or she has been subjected to discrimination and/or retaliation is expected to report the alleged act as soon as possible to that person's immediate supervisor or any supervisor or manager with MKB Construction, Inc., or to its Human Resources Department. Employees may also contact Shane Boyd, President, and/or Erin Redding, Controller, by telephone at (602) 256-6172. Supervisors and managers who are informed of an alleged incident of discrimination and/or retaliation must immediately notify the Human Resource Department.

In addition to reporting a complaint of discrimination and/or retaliation to company officials, a person may also contact U.S. Equal Employment Opportunity Commission, and file a charge of employment discrimination. The address and telephone number of the EEOC office in El Paso, Texas is located at 300 E. Main Dr., Suite 500, El Paso, Texas 79901; (800) 669-4000 or 1-800-669-6820 (TTY). Information about employment

rights and the procedures dealing with how to file a charge is available on the Internet at www.eeoc.gov.

INVESTIGATION OF COMPLAINTS: A complete investigation of each complaint will be undertaken immediately by MKB Construction, Inc.'s Human Resources Department. The investigation may include interviewing employees and supervisors at the facility, the inspection of documents, including personnel records, and a full inspection of the premises.

PUNISHMENT FOR VIOLATION: Employees who engage in discrimination can expect serious disciplinary action. After an appropriate investigation, any employee, whether management or non-management, who has been found to have engaged in discrimination and/or retaliation against another employee will be subject to appropriate sanctions, depending on the circumstances, from a written warning placed in his/her personnel file up to and including termination of employment.

RETALIATION: There shall be no retaliation against any employee because that person has opposed what he/she believe to be unlawful employment practices; or has filed a charge of discrimination, or has given testimony, assistance, or has participated in any manner in any investigation, proceeding or hearing under Title VII of the Civil Rights Act of 1964. MKB Construction, Inc. will not punish you for reporting discrimination or simply because you have made a complaint under the above guidelines or participated in the EEOC's investigatory process.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE REMOVED OR DEFACED BY ANYONE. THIS NOTICE WILL BE POSTED FOR A PERIOD OF TWO YEARS.